

DEVELOPMENT FINANCING AGREEMENT BY AND AMONG
THE CITY OF BAY CITY, TEXAS REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, AND BOLD FOX DEVELOPMENT, LLC

This DEVELOPMENT FINANCING AGREEMENT ("Agreement") is entered into as of _____ ("Effective Date"), by and between the CITY OF BAY CITY, TEXAS, a municipal corporation and a home rule city in the State of Texas (the "City"), the TAX INCREMENT REINVESTMENT ZONE NUMBER TWO, CITY OF BAY CITY, TEXAS (the "Zone"), an administrative body appointed in accordance with Chapter 311 of the Texas Tax Code (the "TIRZ Act") to oversee the administration of Tax Increment Reinvestment Zone Number Two, City of Bay City, Texas, a reinvestment zone designated by ordinance of the City in accordance with the Tax Increment Financing Act ,and BOLD FOX DEVELOPMENT, LLC ("Developer"), a Texas limited liability company.

The City, Zone, and Developer hereby agree that the following statements are true and correct and constitute the basis upon which the Zone and Developer have entered into this Agreement:

WHEREAS, the City created the Zone pursuant to the TIRZ Act; and

WHEREAS, the Board of Directors of the Zone (the "Zone Board" or "Board") and the City each approved and adopted the Reinvestment Zone Project Plan and Financing Plan for Reinvestment Zone Number Two, City of Bay City, dated November 19, 2015, and amended on January 26, 2017 and January 25, 2022 (as amended, "TIRZ Plan"); and

WHEREAS, the Developer has or will construct certain public works and improvements to implement the TIRZ Plan, and the Zone will reimburse the Developer for the Project Costs (defined herein) of such public works and improvements in accordance with this Agreement; and

WHEREAS, pursuant to the TIRZ Plan, certain tax revenues will flow into a fund to be administered by the Zone, known as the Tax Increment Fund; also, the Zone may receive other gifts, grants or other revenue to be accounted for separately from the TIF but used only for duly approved authorized purposes of the Zone;

WHEREAS, the City has delegated to the Zone the powers necessary for the implementation of the TIRZ Plan, which powers include the power to enter into agreements for the construction of public improvements including, but not limited to, improvements related to roads, sewer, drainage and all infrastructure improvements needed for single family residential development and related improvements, to be constructed in accordance with the TIRZ Plan;

WHEREAS, the Zone and City recognize the importance of its continued role in local economic development;

WHEREAS, Developer owns or controls certain property located within the Zone and has requested reimbursement for constructing certain improvements pursuant to the TIRZ Plan; and,

NOW THEREFORE, in consideration of the mutual covenants and obligations herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. General Statement; Agreement for Development of TIRZ Projects; Definitions

See Supplement.

Section 2. Site

Developer owns the real property (the “Property”) which is within the boundaries of the Zone. The Property is specifically described in as shown in attached Exhibit “A.” Developer shall file or use commercially reasonable efforts to cause the filing of a petition to the City for annexation of the Property into the city limits of the City within 10 business days of the Effective Date. The City and Developer shall enter into a Development Agreement as part of the annexation process. With Developer consent, the Property shall also include any real property the Developer acquires in the future in or to be included in the Zone.

Section 3. Project & Financing

Developer proposes to construct private and public improvements including, but not limited to, improvements related to roads, sewer, drainage and all infrastructure improvements needed for a single-family residential development and related improvements as more particularly described in attached Exhibit “B” (“Development” or, collectively, “TIRZ Projects”). The City will have the obligation to own, maintain and operate the following TIRZ Projects after Completion:

- (i) Water, sewer, and drainage facilities, except for any amenity portion of such drainage facilities.
- (ii) Traffic signals, roads, and turn lanes.
- (iii) Any park or recreational facilities pre-approved by the City.

Project shall be funded by and through Developer’s own capital or other financing means arranged and obtained by Developer. Further, the TIF payments made to Developer pursuant to this Agreement may not reimburse Developer for all of its costs incurred in connection with performing its obligations under this Agreement.

Section 4. Financing and Reimbursement of Project Costs

See Supplement.

Section 5. Term

The term of this Agreement shall begin upon the effective date and end upon the earlier of:

- (a) the complete performance of all obligations and conditions precedent by parties to this Agreement;
- (b) expiration of thirty years after effective date; or
- (c) the expiration of the term of the Zone, as may be extended from time to time.

Notwithstanding the foregoing, the City may terminate this Agreement if Developer has not started construction of the TIRZ Projects within 24 months of the Effective Date of this Agreement. In such event, rights and obligations in this Agreement will survive the termination as to any Project Costs paid by Developer prior to termination. Once the Project Costs incurred prior to termination have been paid to the Developer, this Agreement will terminate for all purposes.

Section 6. Exhibits

The parties agree that each and every exhibit that is mentioned in and attached to this Agreement is a material part of this Agreement and each such exhibit is by this reference, incorporated into this agreement for all purposes as though set forth verbatim here.

Section 7. Force Majeure

It is expressly understood and agreed by the parties that if the performance of any obligation of either party hereunder is delayed by reason of war, civil commotion, acts of God, pandemic, inclement weather, governmental restrictions, regulations, or interferences, delays caused by the franchise utilities, fire or other casualty, court injunction, necessary condemnation proceedings, acts of the other party, its affiliates/related entities and/or their contractors, or any actions or inactions of third parties or other circumstances which are reasonably beyond the control of the party obligated or permitted under the terms of this Agreement to do or perform the same, regardless of whether any such circumstance is similar to any of those enumerated or not, the party so obligated or permitted shall be excused from doing or performing the same during such period of delay, so that the time period applicable to such obligation shall be extended for a period of time equal to the period such party was delayed.

Section 8. Indemnity

DEVELOPER AGREES TO DEFEND, INDEMNIFY AND HOLD THE ZONE, THE CITY, AND THEIR

RESPECTIVE OFFICERS, AGENTS AND EMPLOYEES, ASSIGNS AND SUCCESSORS, HARMLESS AGAINST ANY AND ALL CLAIMS, DEMANDS, LAWSUITS, JUDGMENTS, COSTS AND EXPENSES, INTEREST, AND ATTORNEY FEES FOR PERSONAL INJURY (INCLUDING DEATH), PROPERTY DAMAGE (INCLUDING LOSS) OR OTHER HARM FOR WHICH RECOVERY OF DAMAGES IS SOUGHT THAT MAY ARISE OUT OF OR BE OCCASIONED BY DEVELOPER'S BREACH OF ANY OF THE TERMS OR PROVISIONS OF THIS AGREEMENT, OR BY ANY NEGLIGENT ACT OR OMISSION OF DEVELOPER, ITS OFFICERS, AGENTS, ASSOCIATES, EMPLOYEES, CONTRACTORS OR SUBCONTRACTORS IN THE PERFORMANCE OF THIS AGREEMENT; EXCEPT THAT THE INDEMNITY PROVIDED FOR IN THIS PARAGRAPH SHALL NOT APPLY TO ANY LIABILITY RESULTING FROM THE NEGLIGENCE OF THE ZONE, CITY, OR THEIR RESPECTIVE OFFICERS, AGENTS, EMPLOYEES OR CONTRACTORS, AND IN THE EVENT OF JOINT AND CONCURRENT NEGLIGENCE OF BOTH DEVELOPER AND ZONE, RESPONSIBILITY, IF ANY, SHALL BE APPORTIONED COMPARATIVELY IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS. HOWEVER, NOTHING IN THIS SECTION WAIVES ANY IMMUNITY OR OTHER DEFENSE AVAILABLE TO THE ZONE OR THE CITY UNDER TEXAS OR FEDERAL LAW.

Section 9. Events of Default & Remedies

A default shall exist if either party fails to perform or observe any material covenant contained in this Agreement, including exhibits, which is not otherwise excused under the terms of this Agreement. The non-defaulting party shall promptly notify the defaulting party in writing upon becoming aware of any change in the existence of any condition or event that would constitute a default or, with the giving of notice or passage of time, or both, would constitute a default under this Agreement. Such notice shall specify the nature and the period of existence thereof and what action, if any, the non-defaulting party requires or proposes to require with respect to curing the default.

If a default shall occur and continue, after thirty (30) day's notice to cure default, the non-defaulting party may, at its option, pursue any and all remedies it may be entitled to, at law or in equity, in accordance with Texas law. The Zone shall not, however, pursue remedies for as long as Developer proceeds in good faith and with due diligence to remedy and correct the default, provided that Developer has commenced to cure such default within the 30 days following notice.

Section 10. Venue and Governing Law

This Agreement is performable in Matagorda County, Texas and venue of any action arising out of this Agreement shall be exclusively in the State or District Courts of Matagorda County. This Agreement shall be governed and construed in accordance with the Charter, ordinances, and resolutions of the City of Bay City, applicable federal and state laws, the violation of which shall constitute a default of this Agreement. To the extent permitted by law, the law of the state of Texas shall apply without regard to applicable principles of conflicts of law.

Section 11. Notices

Any notice required by this Agreement shall be deemed to be properly served if deposited in the U.S. mail by certified letter, return receipt requested, addressed to the recipient at the recipient's address shown below, subject to the right of either party to designate a different address by notice given in the manner just described.

If intended for Zone or City, to:

Tax Increment Reinvestment Zone No. 2
c/o City of Bay City
1901 5th Street
Bay City, Texas 77414

With a copy to:
Scotty Jones, Director of Finance
1901 5th Street
Bay City, Texas 77414

With a copy to:
Anne Marie Odefey, City Attorney
Roberts, Odefey, Witte & Wall, LLP
2206 Hwy 35 North
P.O. Box 9
Port Lavaca, Texas 77979

If intended for Developer, to:

With a copy to:
The Muller Law Group, PLLC
202 Century Square Blvd.
Sugar Land, Texas 77478
Attention: Richard Muller

Section 12. No Third Party Rights

This Agreement is solely for the benefit of the parties hereto and is not intended to create

or grant any rights, contractual or otherwise, to any other person or entity.

Section 13. Severability

In case any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect by a court or agency of competent jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other remaining provisions hereof and this Agreement shall remain in full force and effect and be construed as if such invalid, illegal, or unenforceable provision had never been contained in this Agreement.

Section 14. Counterparts & Signatures

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument. This agreement may be executed in multiple originals. This agreement may be executed by PDF signatures which shall be deemed originals and equally admissible as originals.

Section 15. Captions

The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

Section 16. Successors and Assigns

The terms and conditions of this Agreement are binding upon the successors and assigns of all parties hereto. Provided, however, Developer shall not assign this Agreement without prior City approval, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, written approval of the City shall not be required for an assignment to an Affiliate of Developer. "Affiliate of Developer" as used herein, includes any parent, sister, partner, joint venturer, or subsidiary entity of Developer; any entity in which Developer is a major shareholder, owns an equity interest, or is a joint venturer or partner (whether general or limited), or to the Developer's financial institution.

Section 17. Limited Rights and Non-waiver

This agreement is intended only to establish the rights and obligations as between the Parties hereto and it creates no right, expectation, benefit or obligation for or toward any other person or entity. Nothing stated or omitted from this Agreement shall be construed as a waiver of any defense, affirmative defense, or immunity available to the Zone or the City and their respective officials, directors, members, employees, agents, assigns, successors.

Section 18. Representations by Developer

Developer certifies and agrees that it (i) does not, nor will not, so long as the Agreement remains in effect, boycott Israel, as such term is defined in Chapter 808, Texas Government Code, (ii) does not engage in business with Iran, Sudan, or any foreign terrorist organization pursuant to Subchapter F of Chapter 2252 of the Texas Government Code; (iii) is not identified on a list prepared and maintained under Sections 806.051, 807.051, or 2252.153, Texas Government Code; (iv) does not, nor will not, so long as the Agreement remains in effect, boycott energy companies, as such term is defined in Chapter 809, Texas Government Code; (v) does not, nor will not, so long as the Agreement remains in effect, have a practice, policy, guidance, or directive that discriminates against a firearm entity or firearm trade association, as such term is defined in 2274.001(3), Texas Government Code; and (vi) is not (a) owned or controlled by (1) individuals who are citizens of China, Iran, North Korea, Russia or any designated country (as such term is defined in 113.003, Texas Business & Commerce Code); or (2) a company or other entity, including a governmental entity, that is owned or controlled by citizens of or is directly controlled by the government of China, Iran, North Korea, Russia, of any designated country; or (b) headquartered in China, Iran, North Korea, Russia or a designated country.

Section 19. Entire Agreement

This Agreement, including any exhibits attached hereto and any documents incorporated herein by reference, contains the entire understanding and agreement between the Zone, the City, and Developer, their assigns and successors in interest, as to the matters contained herein. Any prior or contemporaneous oral or written agreement is hereby declared null and void to the extent in conflict with any provision of this Agreement. This Agreement shall not be amended unless executed in writing by both parties and approved by the governing bodies in an open meeting held in accordance with Chapter 551 of the Texas Government Code.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed in multiple counterparts, each of equal dignity and effect, on behalf of the City, the Zone, and the Developer effective as of the Effective Date.

ATTEST/SEAL

CITY OF BAY CITY, TEXAS

Jeanna Thompson, City Secretary

Robert K. Nelson, Mayor

DEVELOPER

ATTEST/SEAL

REINVESTMENT ZONE NUMBER TWO,
CITY OF BAY CITY, TEXAS

Julie Estlinbaum, Chairman